THE HON'BLE SRI JUSTICE BILAL NAZKI
AND
THE HON'BLE SRI JUSTICE M. VENKATESWARA REDDY

WRIT PETITION No. 24811 of 1999

Date: 29-12-2006.

Between :

Smt.K.Swarna Kumari.

.....Petitioner

And

Government of Andhra Pradesh, rep. by its Secretary, Law (Legislative Affairs and J.Courts.C) Department & Others.

.....Respondents.

For the petitioner : Sri. M.Eswara Prasad, **Advocate.**

For the Respondents: Sri. C.V.Nagarjuna Reddy, Advocate.

< Gist:

> Head Note:

? CITATIONS:

1. 2001 (3) ALD 625 = 2001 (5) ALT 228 (DB)
2. 2001 (6) ALT 255 (F.B)
3. AIR 1972 SC 2179
4. 1991 Supp (2) SCC 12
5. (2001) 6 SCC 491
6. 1998 SCC (L&S) 1389
7. (1999) 7 SCC 739
8. AIR 2000 SC 22
9. (1992) 4 SCC 54
10. (1993) 2 SCC 56
11. (1995) 6 SCC 749

C/15

THE HON'BLE SRI JUSTICE BILAL NAZKI
AND
THE HON'BLE SRI JUSTICE M. VENKATESWARA REDDY

WRIT PETITION No. 24811 of 1999

Date: 29-12-2006.

Between :

Smt.K.Swarna Kumari.

.....Petitioner

And

Government of Andhra Pradesh, rep. by its Secretary, Law (Legislative Affairs and J.Courts.C) Department & Others.

.....Respondents.

THE HON'BLE SRI JUSTICE BILAL NAZKI
AND
THE HON'BLE SRI JUSTICE M. VENKATESWARA REDDY

WRIT PETITION No. 24811 of 1999

ORDER : (Per Hon'ble Sri Justice Bilal Nazki)

Before we deal with the case, it will be necessary to make reference to certain developments, which have taken place during the pendency of this case, relating to

the questions involved in this case. This writ petition has been filed in the year 1999. The petitioner was compulsorily retired from service by G.O.Ms.No.87, dated 28.05.1999. One of the admitted facts was that the enquiry was conducted by the respondents in accordance with the provisions of Andhra Pradesh Civil Services (Classification, Control and Appeals) Rules, 1963 (hereinafter referred to as 'the 1963 Rules'). These 1963 Rules were not in force when the enquiry was initiated. On 05.12.1997, a Circular was issued by the High Court, adopting Andhra Pradesh Civil Services (Classification, Control and Appeals) Rules, 1991 (hereinafter referred to as 'the 1991 Rules'). Additional charges were framed against the petitioner by proceedings dated 06.01.1998. When the matter came up before a Division Bench comprising of the then Chief Justice Mr.Devinder Gupta and Justice M.Narayana Reddy, it noted the submission of the learned counsel for petitioner that prejudice had caused to the petitioner as she was deprived of her rights which she could have availed under the 1991 Rules, therefore, the whole enquiry was bad. The Division Bench's attention was drawn to another Division Bench

judgment of the Court in **V.Rajamallaiah v. High Court of A.P**[1] and a Full Bench Judgment in **V.Venkata Bharani v. High Court of A.P**[2]**.** But the Bench felt that proviso (b) to Rule 45 (1) of the 1991 Rules appears to have not been taken note of by those judgments, therefore, the writ petition was directed to be listed before a Full Bench to consider the question as to the legality and validity of the disciplinary proceedings continued after the 1991 Rules were adopted by the High Court. The matter went to a Full Bench and the Full Bench did not agree with the views of the earlier Full Bench in **V.Venkata Bharani**'s case (2nd supra) and the Judges of the Full Bench were of the opinion,

> "We are of the view that the prejudice doctrine cannot be extended to cases where the entire set of applicable rules have been ignored, judicial discipline necessitates the matter being referred to a Larger Bench. Let the matter be placed before the Hon'ble the Chief Justice for constitution of a Larger Bench to decide the question as to whether the prejudice doctrine can be extended to disciplinary proceedings where the applicable rules, in its entirety, has

been ignored."

Then the matter went to the Larger Bench. The Larger Bench wrote two opinions; one was written by Smt.Justice T.Meena Kumari for herself and for Mr.Justice A.Gopal Reddy and Mr.Justice R.Subhash Reddy. Concurrent opinion was written by Mr.Justice G.Raghuram and the Court held that **Venkata Bharani**'s case (2nd supra) was decided in conformity with the consistent view taken by this Court as well as the Apex Court in the matter of disciplinary proceedings and further held that the prejudice doctrine can be extended to the disciplinary proceedings even where the applicable rules, in its entirety, have been ignored. It also laid down,

> "We answer the reference by declaring that the doctrine of prejudice is generically and in principle applicable even in a context where a departmental inquiry has been conducted wholly under the 1963 Rules though the inquiry was initiated after the coming into force of the 1991 Rules. As to whether relief ought to be granted or declined on a complaint of breach of any one or more of the provisions of the 1991 Rules, the issue must be considered

in the factual matrix of each case and on application of the relevant principles gathered from the several precedents including **State Bank of Patiala v. S.K.Sharma ((1996) 3 SCC 364)**."

This is the background in which this case has come up before us again. Petitioner challenges the order of Government passed in G.O.Ms.No.87, dated 28.05.1999 issued under Clause (vii) of Rule 9 of the 1991 Rules. By this order, the petitioner was punished with compulsory retirement from A.P. Judicial Services.

The petitioner was appointed as Judicial First Class Magistrate in the year 1985 and was promoted as Subordinate Judge and was functioning as such from 13.11.1991. She assumed charge as Sub-Judge at Rajam in Srikakulam District on 10.09.1996. She states in her petition that on her assumption of charge, there were many irregularities being committed by the employees. She also found there was excess staff and they had been working at the same Station for a long time and had created some vested interests. Some of them were locals and had contacts with clients. She addressed a D.O.

letter to the District Judge, Srikakulam to transfer two Clerks, as their services were no longer required at that Court. She had also sought for abolition of the post of 'Oriya Translator', as there was no translation work in the Court. Aggrieved by the letters of the petitioner, the Staff Association got provoked and passed a resolution in December 1996 against the petitioner. The District Judge called for her remarks on the resolution and she submitted detailed remarks. The District Judge closed the matter. When another District Judge by name Sri K.Satyanand took charge, he, alongwith the Additional District Judge, Srikakulam, went to Sub-Court, Rajam on a working day and recorded the statements of certain individuals on 21.06.1997. On instructions of the High Court, the entire process department of Munsif Magistrate Court, Rajam was handed over to Sub-Court. She addressed several communications to the District Judge about proper utilization of the excess staff and transfer of some of the staff members, but there was no response. The facts, according to the petitioner, were brought to the notice of the Portfolio Judge also at that time. Since the petitioner was trying to streamline the staff, the staff developed

grievance against her. The inaction on her letters emboldened the staff and they started disobeying her orders. She explained these problems through her letter dated 20.10.1997 to the District Judge, Srikakulam. The staff, who got aggrieved, started sending petitions and also circulating press publications against her.

Thereafter, it appears that certain communications were sent to the High Court against the Officer and on the basis of those allegations, the High Court, on 19.11.1997, ordered a departmental enquiry against the petitioner and appointed Sri P.Lakshma Reddy, District Judge, Visakhapatnam as Enquiry Officer. The officer was placed under suspension pending enquiry. Subsequently, another communication was issued by the High Court, referring to another complaint dated 01.01.1997 and the District Judge, Visakhapatnam was ordered to frame additional charges. Ten charges were framed by the Enquiry Officer-cum-District Judge, Visakhapatnam against the petitioner on 20.04.1998 and the petitioner was asked to explain. She gave her explanation to the charges denying all the allegations.

The Enquiry Officer, according to the petitioner, proceeded with the enquiry without considering her explanation. The Presenting Officer examined 11 witnesses and marked 44 documents. The petitioner on her side, exhibited 4 documents and did not adduce any oral evidence, but filed additional written statement. The Enquiry Officer prepared a questionnaire framing 30 questions.

After hearing the arguments, the Enquiry Officer sent his report on 23.09.1998 to the High Court. The Enquiry Officer was of the opinion that all charges except Charge No.5, had been proved and he recommended suitable punishment. The Court, on considering the enquiry report, furnished a copy of the enquiry report to the petitioner to offer her explanation. She offered her explanation on 18.11.1998. Thereafter, the High Court felt that it was expedient to impose the punishment of compulsory retirement and requested the Government to issue necessary orders. Then the Government issued the impugned G.O., compulsorily retiring the petitioner from service.

The charges framed against the petitioner were—

"**Charge No.1** :

The Subordinate Judge, Rajam, being the head of office and drawing officer of the pay bills of establishments working in the office is expected to sign, draw and pay the salaries of the Establishments, as per Article 72 of A.P. Financial Code and S.R.7 of T.R.16 of A.P. Treasury Code Volume-I. The bill of process establishment for the month of September, 1997 of Sub Court, Rajam was prepared on 19.9.97 as usual along with other establishment pay bills and placed before the Sub Judge, Rajam for signatures. She has signed the other establishment bills and failed to sign the pay bill relating to Process Establishment. The salaries of process establishment are not received on 01.10.1997, as such the process establishment of Sub Court, Rajam have issued telegram to the Hon'ble High Court of A.P., and District Court, Srikakulam complaining that their salary bills for the month of September, 1997 were not signed by the Sub Judge, Rajam and that therefore, they are starving. They have further submitted separate representation and stated that the Sub Judge, Rajam had intentionally not signed the pay bills keeping in her mind that the Process Establishment staff members

had earlier submitted a detailed representation against her for the harassment and ill-treatment towards the staff members.

Charge No.2 :

On receipt of telegram by the District Judge, Srikakulam, he contacted the Sub Judge, Rajam by phone and ascertained the reasons for not signing the pay bill of Process Establishment for the month of September, 1997. The Sub Judge, Rajam replied to the District Judge, Srikakulam that she had not signed the Process Establishment bill with a view to make the members of the establishment to understand the existence of the Sub Judge, Rajam and without the signatures of the Sub Judge, Rajam, the salary bills cannot be drawn. She further stated in her reply to the District Judge that the bills can be encashed by the staff members even without the signatures of the Drawing Officer, if they are able to get the salaries without her signatures by presenting a bill in the Sub Treasury. Thereupon, the District Judge instructed the Sub Judge on phone that it was not proper on her part in not signing the pay bills of Process Establishment, that since 2.10.1997 was a public holiday, he asked her atleast to sign the bill on 3.10.1997 by 10.30 A.M. immediately after she reaches the Court and see that the bill of the Process

Establishment is enchased. This is all happened on 1.10.1997. On the next day i.e. on 2.10.1997 when the District Judge was talking to the Addl. District Judge, Prl. Sub Judge and Addl. Sub Judge, Srikakulam at his residence, the Sub Judge Rajam came at about 1.00 p.m. and after her arrival the Addl. District Judge and Prl. Sub Judge, Srikakulam left and the Addl. Sub Judge, Srikakulam was alone present. The Sub Judge, Rajam complained about the acts of the Staff Members and disobeying her orders. The District Judge, Srikakulam after hearing her further instructed and requested to sign the pay bill of Process Establishment first, immediately on the next day i.e. 3.10.97 by 10.30 A.M., immediately after she attends the office and see that the bill is encashed, for which the Sub Judge, Rajam agreed in the presence of the District Judge, Srikakulam and the Addl. Subordinate Judge, Srikakulam. On 3.10.97 when the District Judge enquired about the encashment of the bill, it was informed that the Pay Bill was not signed by the Sub Judge, Rajam till 3.00 P.M. but she signed only after 3.00 P.M. after the closure of bank transactions. Thus the Sub Judge, Rajam has grossly disobeyed the orders of the District Judge, Srikakulam, caused inconvenience and hardship to the staff

members in drawing their salaries in time.

Charge No.3 :

One Pogiri Pentayya, issued telegram dt.27.10.97 to the District Judge, Srikakulam and also issued telegram on the same day to the Hon'ble Chief Justice, High Court of A.P., Hyderabad complaining that the judgment in Sessions Case No.138/96 on the file of the Asst. Sessions Judge, Rajam was pronounced on 24.10.97 convicting and sentencing the accused for rigorous imprisonment for three years each and to pay a fine of Rs.1,000/- each in default to suffer simple imprisonment for six months, that the said judgment was not typed till 27.10.97 and the free copies of judgments were not supplied to them. On receipt of the telegram, on 27.10.97, the District Judge, Srikakulam informed the Registrar (Vigilance), High Court of A.P. on phone and proceeded to Rajam and reached there by 5.00 P.M. on 27.10.97. He took along with him Sri M.Govindarao, Head Clerk of his Court for his assistance. Sri K.V.Giridharan, Addl. District Judge, Srikakulam had also accompanied him. By the time they reached and visited the Court of Asst.Sessions Judge, Rajam, the judgment in S.C.No.138/96 was being typed by Sri N.Nagaraju, Steno-typist with reference to the dictation said to have been taken by him in the shorthand notebook

maintained by him from 23.10.97. The judgment was typed in 19 pages completely and upto half portion in the 20th page. Immediately, he got seized the judgment and shorthand note books containing the dictation from the possession of the Steno-typist. He made an endorsement in the margin portion of the said judgment to that effect. The Steno-typist in his statement dt.27.10.97 stated that the judgment in S.C.No.138/96 was dictated by the Asst.Sessions Judge, Rajam on 18.10.97 in part and thereafter it was completed by 24.10.97. By the time the judgment in the said case was pronounced on 24.10.97, the judgment was not typed. The Asst.Sessions Judge, Rajam pronounced the judgment on 24.10.97 by getting the result portion typed on the docket sheet. She had not signed in the shorthand notebook on 24.10.1997, or subsequently. The District Judge, Srikakulam has further stated that the original incomplete judgment and the shorthand note book and other records seized by him were brought to District Court, Srikakulam. Sri P.Prasadarao, Head Clerk, Sub Court, Rajam who was dealing with the branch of Sessions Cases had also given a statement of facts on the above aspects and other aspects touching the harassment meted out to the staff members by the Subordinate Judge, Rajam. After seizure

of the records and the judgment Sri N.Nagaraju, Steno-typist represented to the District Judge that the dictation of Judgment in O.S.7/96 was also taken down in the same shorthand note book maintained from 23.10.97 and the said suit was posted for judgment to 28.10.97 and as the same was not yet typed, he requested to return that book for purpose of typing the judgment in suit which is to be pronounced on 28.10.97. As such, the shorthand notebook commencing from 23.10.97 was returned to the Steno-typist so as to enable him to transcribe the judgment in O.S.7/96 under proper acknowledgment and with a direction to handover the shorthand notebook to the District Court intact without any modifications on 28.10.97. Accordingly, the Steno-typist produced the shorthand notebook on 28.10.97 before the District Judge, Srikakulam. Thereupon, the District Judge instructed the steno-typist to complete the remaining portion of the judgment in Sessions Case No.138/96 from page No.20 upto which it was typed previously, at the District Court, Srikakulam itself and accordingly he has completed the typing of the judgment and delivered to the District Judge, Srikakulam. The District Judge further stated that he perused the record in Sessions Case No.138/96 produced by Sri P.Prasada Rao,

Head Clerk and he observed that the accused 1 to 49 were convicted and sentenced to suffer rigorous imprisonment for 3 years each and to pay a fine of Rs.1,000/- each in default to suffer simple imprisonment for six months and the said sentence was suspended till 4.11.97 as per order dt.25.10.97 in Crl.M.P.Nos.230/97 and 231/97 on the file of Asst. Sessions Judge, Rajam, that he felt that the original judgment in S.C.No.138/96 dt.24.10.97 has to be retransmitted to the Asst. Sessions Judge, Rajam for preparing copies of judgment and supplying them to the accused as otherwise the accused would be put to hardship. He has therefore, transmitted the complete judgment (not signed by the Asst. Sessions Judge, Rajam) in his proceedings Dis.No.5911 dt.28.10.97 to the Asst. Sessions Judge, Rajam, so as to enable her to supply copy of judgments to the accused. Thus, the accused were deprived of getting free copies of judgments on the date of pronouncement of judgment, on 24.10.97 as per the provisions of Criminal Procedure Code and they were put to hardship.

Charge No.4 :

The Government of A.P., in their memo No.26444-A/500/A.2/FR.I/97 dt.10.7.1997 have extended facility to the State Government employees to surrender earned leave before

31.8.1997 those who have leave title of 240 days. Sri S.Suryam, Amin, one of the eligible candidates has applied by submitting an application on 13.8.1997 with a request to sanction permission to surrender earned leave for 15 days from 16.8.97 to 31.8.97 in terms of the said Govt. Memo. A rough calculation sheet of leave account of the said Amin was prepared by the Head Clerk and in-charge Sheristadar as per the instructions of the Sub Judge, Rajam and found entitled to get the benefit. A letter dt.26.8.97 addressed to the District Judge, Srikakulam forwarding the leave application of Sri B.Suryam, Amin was prepared and placed before the Sub Judge, Rajam for signature. The Sub Judge, Rajam had deliberately not signed the letter keeping in view that the said Amin is one of the petitioners in a petition sent against the Sub Judge, Rajam. As the letter was not signed and the leave application was not forwarded, the Amin lost the benefit of surrender of earned leave though he is entitled to.

Charge No.5 :

Ten staff members of Sub Court, Rajam have applied to the District Judge, Srikakulam requesting to accord permission to surrender earned leave for 15 days from 17.10.97 to 31.10.97 for encashment. The District Judge, Srikakulam in his proceedings Dis.No.5751

dt.21.10.97 was pleased to accord permission to them to surrender earned leave as per their request. A bill for Rs.18,920/- was prepared in pursuance of the proceedings of the District Judge and the said bill was signed by the Sub Judge, Rajam on 27.10.97. A.P.T.C. Form No.101 in support of the said bill was also signed by the Sub Judge, Rajam. Having signed the bill and A.P.T.C. Form No.101, the Sub Judge, Rajam had deliberately made an endorsement on the bill as to how the members are entitled to house rent allowance and stopped the presentation of the bill. Subsequently, she made an endorsement on the said bill on 31.10.97 to the effect that the bill was cancelled. The Staff Members who are affected with the irrational act of the Sub Judge, Rajam complained to the District Judge, Rajam on 27.10.97 when he visited Rajam. The act of the Sub Judge, Rajam in not presenting the bill even though the District Judge, Srikakulam accorded sanction with a view to cause harassment and loss to the staff members, for extraneous reasons.

Charge No.6 :

The annual increment of Sri N.Chandra Sekhara Rao, Process Server, Sub Court, Rajam was sanctioned on 12.8.97. An arrear increment bill was prepared for Rs.95/- along with necessary enclosures such as increment

certificate and A.P.T.C. Form No.101. The Sub Judge, Rajam has not signed the bill though she sanctioned the increment due to the individual for the reason that the said process server is one of the petitioners in the petition sent against the Sub Judge, Rajam. The act of the Sub Judge, Rajam betrays the vindictive attitude against the said staff member.

Charge No.7 :

The annual increments of the following staff members, Sub Court, Rajam are due on the respective dates of accrual;

1. Sri B.T.Rangarao, Oriya Translator.
2. Sri M.Gopala Rao, Process Server.
3. Sri A.Trinadha Rao, Process Server.
4. Sri N.R.Gopalakrishna, Attender.
5. Sri M.Polayya, Process Server.
6. Sri D.Srinivasu, Examiner.
7. Sri V.V.Adinarayana, Amin.
8. Sri P.Prasadarao, Head Clerk.

It is clearly envisaged in Rule 24 of Fundamental Rules, that an increment to the Govt. employees shall be sanctioned as a matter of course unless such increments are withheld or postponed by the competent

disciplinary authority. Though there are no such orders, the Sub Judge, Rajam had deliberately not sanctioned the increments to the above staff members though necessary proposals were placed by the Chief Ministerial Officer, with a view to cause hardship to the Staff members for the extraneous reasons and for the reason that they have submitted petitions against her.

Charge No.8 :

Sri K.T.N.Prabhu, Typist, Sub Court, Rajam proceeded to Srikakulam on official duty on 26.5.97, 30.5.97 and on 3.6.97 as per the instructions of the Chief Ministerial Officer to obtain signatures from the in-charge officer on urgent correspondence and other matters. Two T.A. Bills for the months of May and June, 1997 of the individual were prepared and placed before the Sub Judge, Rajam along with a covering letter addressed to the District Judge, Srikakulam for signatures. The Sub Jude, Rajam has neither signed the T.A. Bills nor forwarded them to the District Judge, Srikakulam, thereby the individual lost his claim of T.A. though he incurred expenditure for the official journeys he performed in connection with the official duties. The Sub Judge, Rajam thereby committed misconduct and caused loss to the individual for the

reason that the T.A. claimant had not acted as per the wishes of Sub Judge, Rajam.

Charge No.9 :

The Hon'ble High Court of A.P., Hyderabad issued circulars from time to time for deposit of P.D. Account amounts in various Nationalized banks in the shape of F.D.Rs. Accordingly, the deposits made in various L.A.OPs., and other proceedings were invested in various banks in Rajam, by the Sub Judges, who acted prior to Smt.K.Swarna Kumari. Smt.K.Swarna Kumari, Sub Judge, Rajam during her period had withdrawn the deposits for no valid reasons, kept the amounts in P.D.Account for some time and again reinvested in some other banks different of their originally invested banks. One of the Bank employees sent up unsigned complaint to the Hon'ble High Court stating that the Sub Judge, Rajam requested to arrange vehicle for her tour and they could not arrange the vehicle. The Sub Judge, Rajam withdrawn the deposits from their Bank even at immaturity stage and reinvested in some other banks. The act of the Sub Judge, exfacie supports the allegations set out in the complaint petition sent by some of the bank officials to the Hon'ble High Court. The former District Judge, Sri K.C.Bhanu on receipt of the complaint petition from the Hon'ble High Court, caused

investigation about the deposits and reinvestments and he submitted a detailed report to the Hon'ble High Court from which it is prima facie found that the Sub Judge, Rajam acted derogatory to the prestige of the office which amounts to misconduct.

Charge No.10 :

Sri P.Prasadarao, Head Clerk and in charge Sheristadar, Sub Court, Rajam submitted a statement of facts on 27.10.97 to the District Judge, Srikakulam narrating the harassment made by the Sub Judge, Rajam to the staff members and the fact of not typing of judgment in S.C.No.138/96 on the file of Asst. Sessions Judge, Rajam. He had also produced the record in S.C.No.138/96 before the District Judge, Srikakulam on 28.10.97 for perusal. The Sub Judge, Rajam could not bear with the acts of Sri P.Prasadarao and went upon harassing the individual and in that process, the Sub Judge, Rajam issued memo on a flimsy ground stating that an unregistered appeal bearing O.R.No. 1729/96 was not placed before the Sub Judge, Rajam for orders, till 11.11.97. The un-registered appeal was returned by the Sub Judge, Rajam on 4.8.97 for payment of deficit court fee before 18.8.97. The Sub Judge, Rajam in the official memo issued to the Head Clerk, P.Prasadarao

alleged that the said appeal was not placed till 11.11.1997 though the deficit court fee was paid on 18.8.97. The Sub Judge has further stated that she called for the explanation basing on an office note dt.11.11.97 put by the Steno-typist Sri N.Nagaraju. In fact, the office note does not contain the particulars by whom it was prepared and placed. It is also prima facie found that Sri P.Prasadarao was not in-charge during the period as Sheristadar. The Sub Judge, Rajam with a view to cause harassment and disparagement to the individual issued memo without any valid material and thereby displayed misconduct in discharging her official duties."

The explanation submitted by the petitioner for the above charges was—

"**Charge No.1** :

I took charge of Process Establishment in July 1997. I realized that there are two excess process servers and an Amin. I informed the fact to the District Court and requested them to transfer without any substitute arrangements. Some process servers are very long standing, right from 1980 and they being in predominant position by virtue of their station seniority. One A.Trimurthulu was involved in a criminal case and a civil suit before the Judicial I Class

Magistrate, Rajam and I brought this fact to the notice of the District Judge and asked for his transfer. His Lordship Justice Bhikshapathi visited Sub-Court, Rajam and instructed me in the presence of the then District Judge and Judicial I Class Magistrate to get the premises cleaned by the Process Establishment. I posted two process servers and they refused to attend. I realized that only six process servers are attending to work and two were not entrusted with any legitimate duty. I brought all these facts to the notice of the District Judge. In spite of all these things the process establishment in my absence, when I was on leave made a representation to the then Addl. District Judge. I came to know this fact subsequently. I asked them to prepare bills, because they committed insubordination without any intimation to the officer concerned. I informed them when they have no respect to the drawing officer they can as well draw their salaries with their signatures if rules permit. They did not place the bills even after 19th nor I refused. I sent word to Prakash Rao, Amin on 1.10.1997, but he did not attend. I never refused to sign the bills nor I have an intention to do so. The staff at sub-court, Rajam also made such representation in December 1996 and made a cheap paper publication damaging my reputation on 1.1.1997. The

same was adopted by the process establishment again in September 1997. The District Court did not take proper steps to control insubordination. I have no other alternative except to warn them being the head of the institution. I signed the bills when the staff of Sub-court, Rajam made a signed representation to the learned District Judge against me in January 1997. So the question of vendictiveness does not arise. The process establishment did not place the bills till 30th September 1997 with an ulterior motive of giving telegrams. I never ignored my official duties and I signed the other bills. The issuing of telegram on 1.10.1997 itself discloses that they are malafide, otherwise they ought to have informed the same before 30.9.1997 without putting their problem before the learned District Judge from 19.9.1997 to 30.9.97 either orally or in writing giving opportunity to the learned District Judge to solve their problem. Directly sending telegram to Registrar (Vigilance) speaks volumes regarding their conduct and attitude. I never violated the F.R. I did not sign because they did not place the same before my table for my signatures. They were so guilt-ridden. The salaries for the month of January 1997 were received on 4.2.1997 and March 1997 salaries were

received on 4.4.1997. In fact sub-court Attenders received salaries of September 1997 on 15.10.1997. So the question of starving does not arise and it was an invented fact. There is nothing like official secrecy land everything is used to be revealed to them soon after a letter is dispatched from my desk. Therefore they bore tremendous grouse against me though they came into my control only two months ago.

Charge No.2 :

I paid a visit to the learned District Judge on 2.10.97 as I previously could not see him after he took charge as District Judge, Srikakulam. I was not called by the learned District Judge. During the course of conversation, I requested the learned District Judge to transfer certain process servers as they are excess and long standing and causing much hindrance to peaceful administration of the court. The learned District Judge then informed me that the process establishment directly sent a telegram to the vigilance cell and asked me to sign the bills and he will look into the matter of the transfers later. But he never informed me to sign the bills at 10-30 A.M. That is the reason why the same was not mentioned in his report and it was only an after thought. I did not speak in a defiant tone on 1-10-1997 to the

learned District Judge over phone. I usually attend judicial work by 10.30 A.M and afterwards administrative work. I did the same even on 3.10.1997. The process establishment was quite reluctant to bring the bills even on 3.10.1997. I on my own accord sent word for the head clerk to place the bills immediately. I got down from the bench by 12/12.30 noon and signed the bills at once. On 3.10.1997 around 1/1.30 P.M. I received a phone call from the Sheristadar, District Court and I informed that I already signed on the bills. Again a telephone was made to the Judicial I Class Magistrate around 3 P.M. He informed that I signed the bills at 3 P.M. I reversed the judgements of the present Judicial I Class Magistrate and he was very much aggrieved and gave false information which prejudiced the mind of the learned District Judge. The process establishment was in his control till recently for over a period of 2 years during his tenure of office and he handed over the charge of the same quite reluctantly and unwillingly. It is a puzzle how he came to know the time of signing the bills in my chamber speaks volumes especially when he was not in talking terms with me.

Charge No.3 :

The Sessions Case 138 of 96 is an identified

case where 49 people including aged people and women were involved. The crime relates to 1994 with regard to theft of ballot boxes and obstruction of government officials in due discharge of their duties. The accused at the first instance moved for transfer of this matter from sub-court during my tenure. They did not succeed in their attempt and moved for transfer of this case from my file and they failed in High Court also. Later some of the accused absconded in order to drag on the matter and NBWs were issued to nearly 10 to 15 accused. Ultimately the trial was completed and arguments heard. After hearing the arguments, I gave dictation to the Steno as is my normal practice. I only gave conclusion on 24.10.97 as the accused were highly influential and high-handed people belonging to local ruling political party. I completed my dictation around 3/3.30 P.M. and gave time to the steno for completion of typing till 4.30 P.M. As the crime relates to a political party there was a huge crowd on the premises of the court and it became impossible to the police to control the crowd. When I sent word at 4.30 P.M. to steno, he said that the judgment was ready. So I went to the Bench as it will take sufficient time to the police to take the accused into custody. Only while pronouncing judgment the steno informed that the last page was not

typed. As there is no other alternative and there is every chance of judgments being revealed and accused absconding and there would be no chance for me to pronounce the judgment on a subsequent date and it would lead to so many other complications. The practical difficulties of a Judge must be understood in judicious spirit. The steno categorically admitted before the learned District Judge on 27.10.97 at the time of seizure that dictation was completed and he could not type due to his personal problems. There was gross negligence even according to his admission and there is dereliction of duty for which no action followed till today from the District Court. The staff collected fine to a tune of Rs.50,000/- and placed the bonds around 10.30 P.M. My mind was fully engaged from 24th to 28th October 1997. I again sent word to the steno on 25.10.97 and I came to know that he was absconding and left for Vizag, his native place on 25.10.97 and 26.10.97 (being Sunday). A memo was prepared and the same was seized by the learned District Judge. The learned District Judge spent till 9 P.M. on 27.10.97 with the process establishment and seized so many records in my absence as per the information given by the head clerk. The learned District Judge did not spare even one minute to me in order to

ascertain the facts. The steno brought typed papers of judgment around 12.30 noon on 27th and I asked him to place it in proper form. When I asked him about the reason for non-typing of judgement he threw the blame on the sessions clerk that he took the record for preparing the bonds. The telegram by Pogiri Pentaiah was a fictitious one issued by staff of sub-court and no petition followed it. So there was no complaint at all.

Charge No.4 :

Regarding B.Suryam, Amin, I forwarded his application to the District Court though this court did not receive the circular from the District Court by that time. But the District Court returned the same with an objection. Then I asked the head clerk who is in-charge Sheristadar to verify the Earned Leave account and submit the same but it was not placed in time and it has become time-barred later after complying the objection. Later he encashed the Earned Leave along with other staff members. So there is neither vengeance nor ill-treatment.

Charge No.5 :

I signed the Earned Leave encashment bill of

the staff members and the same was also seized on 27.10.97. But even before my signing on the bill, the staff hurled an insult that if I fail to sign that they will intimate the same to the District Court. Thus a threat was hurled on my face as and when I was preparing to sign on the bill. This threatening attitude of the subordinate naturally pricked my conscience. Apart from this, I am very much doubtful regarding the entries of Earned Leave Record. I myself detected that the earned leave availed by Mr.N.R.G.Gopalakrishna, Attender of this court was not debited. So there was again a credit of 15 days. Similarly the District Court sent a memo that the E.L. encashed by one Mr.Govindarao of this court was not shown in the service record of the individual. Thus there are false entries and false credits of E.L. account in the S.Rs. of different individuals. There was no proper maintenance of E.L. account in the S.Rs. by the Chief Ministerial Officer. So I asked my Chief Ministerial Officer to verify and submit a report before preparing a bill. He failed to do so and rather refused to do so in view of the latches underlying in the S.R. of each individual. After signing the bill, I entertained a doubt how they are entitled to H.R.A. in encashment as the same objection was taken when I applied for the same. The Chief Ministerial Officer failed to clarify my

doubt and so I put the same on the bill and later it was clarified and they encashed the same. The rule position was same originally land later it was amended as per the note prepared by the head clerk. So anything attributed to me in this regard is doubting my sincerity in discharging my duties.

Charge No.6 :

I sanctioned the increment of Mr.N.Chandrasekhara Rao, Process Server (as the increments of others are also due, I asked the Chief Ministerial Officer to prepare one bill for the entire process establishment). The bill was not placed before me. To facilitate administration and to minimize work, I have instructed the Chief Ministerial Officer to adopt a uniform procedure of doing a single bill for the entire process establishment.

Charge No.7 :

Immediately after taking charge, I noticed that the Oriya Translator Post at Rajam is not at all necessary and it was a superfluous addition especially with U.D. Cadre. This is the root cause for the entire trouble both at my sub-court level and at District Court and the District Judicial Employees Union level. I addressed a number of D.O. letters that there is no necessity for continuation of this purely

temporary post, as Rajam is on the Southern tip of the Srikakulam District. This topic was raised by Sri K.C.Bhanu the District Judge in the conference before the Portfolio Judge his Lordship Justice Rajagopalareddy. His Lordship Justice Rajagopala Reddy also advised and appreciated only the Sub Judge, Rajam informed that there is less work and more staff and excess staff can be taken away by the District Court for satisfactory utility of their services. For all my troubles with the staff their grievance was that I addressed such letters and thereby caused a big hue and cry, though nothing took place out of my D.O. letters. The Oriya Translator never translated a single deposition or document during his tenure of 4 years as Oriya Translator with U.D. capacity. He was deputed as O.P. Clerk for some time and record room i/c for some time. His services were never taken by the court for translation purpose. So the very purpose of his appointment in this court is defeated. When I represented this fact in the conference, the Hon'ble High Court Justice directed the District Judge to remove this temporary post. In spite of his Lordship's instruction, the District Court continued him in my court and thereby caused untold havoc and misery to me. He used to demonstrate anonymous and pseudonymous petitions to the High Court as

well as District Court and provoked the other staff members to revolt. When I addressed a D.O. letter, a Departmental Enquiry was also launched against the Oriya Translator, Mr.B.T.Rangarao and the Steno D.Srinivasa Rao who claimed conveyance allowance without attending my residence for dictation either before court hours or after court hours. I am always in the habit of giving dictation in the chamber itself soon after the completion of my judicial and other administrative work and on Saturdays. The steps taken by me to develop sincerity among the staff members has led to my suspension. When two Attenders abstained from duty, after calling for their explanation their salary was remitted to the treasury for the said period. Similarly the process servers in their guard duty frequently used to abstain guard duty. So I took all measures so as to make them present. When the guard of the Munsif Court similarly abstained from duty the District Munsiff who is in-charge of the Nazarat who also came to know this fact personally failed to take steps to control indiscipline. This made all the difference between our two regimes in the administration of process establishment. Except Mr.D.Srinivas, Examiner, I am not satisfied with the services of other process establishment and they caused much

displeasure in discharging their duties. The objection taken by me in the increment register to place a note regarding their work aspect was not complied by the Chief Ministerial Officer. The District Court also expressed its dissatisfaction regarding their performance. The increment will usually be granted for the improved services but not for dissatisfactory service or at times 'nil service'. I was very much displeased when arrest warrants were returned collusively and a number of times Advocates made representations regarding the dissatisfaction of their performance (their collusiveness with JDRs). I addressed a number of letters regarding transfer of Mr.B.T.Rangarao, M.Gopala Rao, A.Trinadha rao, N.R.G.Gopala Krishna, M.Polaiah and Mr.B.Suryam, Amin as they are the men behind these resolutions.

B.T.Rangarao and D.Srinivasa rao were transferred in July 97 as the then District Judge was annoyed when they questioned the act of the District Judge himself launching an enquiry against them. Thus I suffered a lot of torture and agony due to the acts of my; staff demonstrating petitions to High Court as well as District Court and by passing resolutions and by making cheap paper publications damaging my reputation which are quite against the conduct rules of any government

servant. Knowing pretty well that I am on the verge of promotion they have aggravated the situation and successfully exploited the situation. They have also succeeded with my suspension.

As per the F.R. 24 there is no necessity for the postponement of increment or withholding of increment by the competent authority. As the drawing officer is supposed to check the performance of the individual and his performance must be satisfactory to the drawing officer. The sanction of increment is only for improved service and satisfactory service but not for disobedience and nil service to the drawing officer. I sanctioned the increments of all except Mr.B.T.Rangarao as I expected his temporary post would be cancelled as per the directions of his Lordship Justice Rajagopala Reddy.

Charge No.8 :

Mr.K.T.N.Prabhu is Typist of Sub-court. The Chief Ministerial Officer, Narayanamurthy did not inform me that he deputed Mr.Prabhu to attend Sub-court, Srikakulam and to leave headquarters. So I took the same objection and the same was not complied by the head clerk. The District Court also took similar objection when I applied for T.A. to give evidence in the Departmental Enquiry of

B.T.Rangarao and D.Srinivasarao. The bill was prepared in February 1998. When I handed over the certificate on 16th November, 97 asking them to prepare a bill until I brought the same into the notice of the in-charge sub-judge. So I lost my T.A. bill because of the latches of the staff. His confidential reports by my predecessor disclose the attitude of the individual and he was transferred to this court on the D.O. letter of the Presiding Officer. Such are the antecedents of Mr.K.T.N.Prabhu.

Charge No.9 :

The F.D.Rs. are in the custody of Sheristadar even before I took charge as Sub Judge, Rajam. The Sheristadar used to place note and list of matured F.D.Rs. and after encashment, he used to place note again for fresh deposit. The charge is vague and there was no relevant material in the petition. The Chief Ministerial Officer and Accounts Clerk are responsible for the delay of deposits and they must be held responsible for any loss of interest. In spite of my repeated instructions they did not place the note for fresh deposits. I already submitted remarks to the then District Judge. I am of the clear opinion that this petition is demonstrated by staff on 1.1.97 along with a cheap paper publication. Otherwise there is no scope for the bank

officials and outsiders to know the internal administration and verification of deposits. Prior to my arrival to Rajam there were deposits at Boddam (Syndicate Bank) and Ponduru (State Bank of India). I did not go for any cancellation of any deposit at a premature stage. I did not vitiate circulars of the Honourable High Court and I am not responsible for the delay. I never asked for any car as alleged.

Charge No.10 :

Mr.P.Prasada Rao, Head Clerk was transferred to my court on some allegations that he demonstrated petition against Sri K.C.Bhanu, District Judge to the High Court. I received a letter from the District Court that he committed fraud in T.A. Bill (by producing false ticket numbers) even before his arrival.

I issued 3 memos for not numbering 30 plaints during his tenure and for tampering of record by introducing court fee in a rejected appeal for non-payment of court fees. The third memo was issued only at his instance when the Steno offered explanation for not typing the judgment as the Head Clerk cum Sessions Clerk i.e. Sri P.Prasada Rao failed to hand over the record on the pretext of preparing bonds. Immediately after the memos without offering explanation, he

applied for Medical Leave with a false certificate and immediately cancelled the same after my suspension and reported to duty.

If checking of a senior Clerk cum Chief Ministerial Officer on the grave dereliction of duties and tampering of record amounts to harassment, I have no explanation for this charge. The same learned District Judge who felt that issuing a memo is harassment also issued a memo to this individual on submitting false information regarding Earned Leave Bill and explanation was called for by the District Judge from the in-charge officer and the matter was also informed to the High Court by the District Judge. The in-charge officer was also issued a memo by the District Judge on this aspect.

The Document '4' in Charge No.10, the explanation dated 21.3.98 by P.Prasada Rao speaks volumes regarding the integrity of the court and staff and judiciary in toto. In the 2nd week of November memos were served and time was extended upto 21st or 22nd November. The explanation dated 21.3.98 is a manipulation subsequent to my suspension. There was no explanation by Sri Prasada Rao within the time stipulated by the court. There was no extension of time for offering

explanation after a lapse of 4 to 5 months from November 97 till March 98 speaks volumes in sending a vindictive report and partial report against me. The learned District Judge instead of launching action against Sri Prasada Rao for his gross dereliction of duty, sent a report against me even after my suspension discloses any amount of partiality towards me and impartiality towards the staff and especially this Prasada Rao. The same gentleman and Mr.Narayanamurthy made statement before Sri Satyanand, District Judge that they have no grievance.

In conclusion I can only state that I have been working in absolute honesty and sincerity and my acts in good faith to improve the efficiency of staff were misconstrued by the hierarchy as well as my subordinates."

The learned counsel for petitioner challenges the impugned Government Order on three grounds; firstly, it is contended that the services of legal practitioner were not allowed and that caused prejudice to the petitioner. In para 7 (c)(v) of the writ petition, it is contended that the petitioner moved an application for permission to engage a legal practitioner. She also sent a letter on 09.07.1998

and a telegram on 13.07.1998. The letter and telegram were rejected on 31.07.1998 after the closure of enquiry. She further submitted that this not only showed the bias of the Enquiry Officer, but also deprived the petitioner of having the assistance of a legal practitioner. The Presenting Officer was a senior District Judge, who was superior to the petitioner and obviously well versed and better than the petitioner in law. She was entitled to have the assistance of a legal practitioner under sub-rule 8 of Rule 20 of the 1991 Rules.

In the counter affidavit the Registrar of the High Court stated that the petitioner herself was a Judicial Officer, having considerable experience and as such rejecting her request for engaging a counsel for defending her, was justified.

Rule 19 (2)(b) of the 1963 Rules lay down,

> "Except under very special circumstances to be recorded in writing by the inquiry officer or any officer to whom an appeal may be preferred, no pleader or agent shall be allowed to appear either on behalf of the Government

or on behalf of the person charged before the inquiry officer.

Provided that when a request is made by the person charged for engaging a counsel on the ground that he is not acquainted with the language in which the inquiry is conducted, the inquiry officer or the officer to whom the appeal has been preferred shall allow the person charged to be represented by a counsel."

Sub-rule (8)(a) of Rule 20 of the 1991 Rules lay down—

"The Government Servant may take the assistance of any other Government Servant to present the case on his behalf, but may not engage a legal practitioner for the purpose unless the Presenting Officer appointed by the disciplinary authority is a legal practitioner, or, the disciplinary authority, having regard to the circumstances of the case so permits."

There is no material difference between the provisions of the 1963 Rules and the 1991 Rules because, in both cases, the disciplinary authority can permit assistance of a legal practitioner except that in 1991 Rules, a legal practitioner can be allowed to

represent the delinquent officer if the Presenting Officer is a legal practitioner. The learned counsel for petitioner submits that a senior District Judge should be taken to be a legal practitioner and as such, there was prejudice caused to the petitioner by not allowing her to engage a legal practitioner. But if the senior District Judge, who was the Presenting Officer, is taken to be a legal practitioner, then the petitioner herself was also a legal practitioner by being a Senior Civil Judge.

In this connection, reliance has been placed on various judgments.

In the judgment reported in **C.L.Subramaniam v. The Collector of Customs, Cochin**[3], the delinquent officer was pitted against a trained public prosecutor who was not a 'legal practitioner'. The disciplinary authority did not allow the delinquent officer to engage a legal practitioner. The relevant Rule was a portion of sub-rule (5) of Rule 15 of the Central Civil Services (Classification, Control and Appeal) Rules, 1957, which lays down that the Government servant may not engage a legal practitioner for the purpose mentioned in that clause,

unless the Disciplinary Authority having regard to the circumstances of the case so permits. In the factual matrix, the Supreme Court found that by denying the services of a legal practitioner to the delinquent, the authority had failed to exercise the power conferred on it under the Rule and therefore, prejudice had been caused to the delinquent by not allowing him to engage a legal practitioner, which amounted to denial of reasonable opportunity to defend.

On the other hand, the learned counsel for respondents has relied on a judgment of Supreme Court in **Indian Institute of Technology, Bombay v. Union of India**[4]. The Rule in this case which was interpreted by the Supreme Court was very similar to the Rule with which we have to deal with in the present case. Para 5 of the judgment lays down—

> "5. So far as the first point is concerned, the relevant rule – which is, Rule 14(8)(a) of the Central Civil Services (Classification, Control and Appeal) Rules, 1965, applicable to government servants – says that:
>
> "14(8)(a) The government servant may take the assistance of any other government

servant to present the case on his behalf, but may not engage a legal practitioner for the purpose unless the Presenting Officer appointed by the disciplinary authority is a legal practitioner, or the disciplinary authority, having regard to the circumstances of the case, so permits."

In the present case, the Presenting Officer was admittedly not a legal practitioner. If, in spite of this, the respondent desired to have the services of a lawyer, he should have applied to the disciplinary authority for permission. He did not do so. The High Court has taken the view that the Enquiry Officer must have passed on the respondent's application for the services of a lawyer to the disciplinary authority and should not have disposed it of himself. We do not think that this approach is correct. The Enquiry Officer was entitled to consider the application to the extent of deciding whether the Presenting Officer was a legal practitioner or not and he was entitled to reject the application since that was not so. The respondent was an educated person fully aware of the contents of the rule and ifhe desired the services of a lawyer on any other ground, he should have made an application to the disciplinary authority which he did not do. The Enquiry Officer cannot be blamed, in the circumstances of this case, for having rejected the respondent's application or for not having passed on the request to the disciplinary authority."

In this case, the Presenting Officer was not a legal practitioner. Inspite of that, the delinquent officer desired to have the services of a legal practitioner. The Rule gave power to the disciplinary authority to consider such a request but she had not made any request to the disciplinary authority. Therefore, in our view, this judgment is not relevant for the present case. However, we feel that since the Presenting Officer was represented by a Judicial Officer and the delinquent herself was a Judicial Officer, though lower in rank, we do not think that any prejudice is caused to the petitioner.

The second ground which is agitated during the hearing is that there was bias and the action of the respondents was *mala fide*. But the basis for alleging bias is not stated in the writ petition. Only one paragraph i.e. ground No.v in the writ petition states as under—

> "The enquiry officer's partisanness and prejudice is also apparent from the fact that the petitioner's application for permission to engage a legal practitioner letter on 9-7-98 and telegram 13-7-98 was rejected on 31-7-98 after the closure of the enquiry. The presenting officer being a District Judge who is

> superior to the petitioner, she is entitled to engage a legal practitioner under sub-rule 8 of rule 20. The enquiry officer failed to call for the records requested by the petitioner by her letter dated 9-7-98 and thereby violated the provisions of sub-rule 11 of rule 20."

We have already dealt with the question of not allowing a legal practitioner to appear for the petitioner in the enquiry. Therefore, the act of the District Judge in not allowing a legal practitioner to represent the petitioner, cannot be a ground for coming to the conclusion that there was bias. The allegations levelled against the District Judge, Visakhapatnam in conducting the enquiry cannot be gone into because, he has not even been made a party to the writ petition and as such, the District Judge, Visakhapatnam had no opportunity to controvert the allegations levelled against him.

Thirdly, it is contended that the acts and omissions attributed to the petitioner do not constitute misconduct. We have already referred to the charges, which were held to be proved against the petitioner. The first charge was that she had not signed the pay bills on the ground that the members of the process establishment had sent a

representation to the District Judge against her. This charge was conclusively proved during the enquiry. The second charge also related to the signing of bills and the District Judge, Srikakulam himself had deposed that he had requested the officer to sign the bills on 03.10.1997, but inspite of that, she did not sign the bills till 2 p.m., so that the bills could not be presented in Treasury on 03.10.1997. Third charge was equally very serious, where it was found that the officer had pronounced a judgment on 24.10.1997 when the judgment had not even been typed. Charge No.4 also was held proved and it was found that the officer wanted to somehow prevent the Amin to avail the benefits of a G.O. to encash the leave. Charge No.6 also related to preparation of a bill of a process server, which was not signed. Charge No.7 related to signing of a note with regard to release of annual increments to the staff. Charge No.8 related to a claim of T.A. Charge No.9 was a serious charge. An amount deposited in the State Bank of India, Rajam, amounting to Rs.22,08,000/-, on maturity, was withdrawn by the officer on 24th of November 1996 and kept in CCD and again it was put in State Bank of India, Palakonda on

3rd of March 1997. From 24th November 1996 to 3rd of March 1997, the parties who were entitled to the amounts, lost the interest. The parties lost interest for about three months and ten days, amounting to about Rs.60,000/-, and the officer did not explain as to why she adopted such a course. Similarly, another amount of Rs.2,71,209/- was withdrawn from Andhra Bank, Rajam on 09.12.1996 and deposited in Vysya Bank, Rajam on 8th of January 1997. The District Judge found that there were about 22 instances where amounts were withdrawn from the local banks, kept in CCDs, and thereafter re-invested in other banks after lapse of time.

The learned counsel for petitioner submits that these acts do not constitute misconduct. We are afraid we cannot accept such an argument. The learned counsel submits that as the petitioner had made certain remarks against the members of the staff, therefore, the staff had ganged up against her, which resulted in the enquiry and ultimate punishment.

In this case, learned counsel for petitioner has

placed reliance on a judgment of Supreme Court in **P.C.Joshi v. State of U.P.**[5] It was a case altogether in a different context, where the judicial act of a Judicial Officer was sought to be counted as misconduct and it pertained to grant of bail.

He also relied on the judgment in **R.C.Sood v. High Court of Judicature at Rajasthan**[6], wherein initiation of disciplinary proceedings was held bad. On facts, in para 24 of the judgment, the Supreme Court came to the following conclusion—

> "We have no manner of doubt that there was a complete lack of bona fides on the part of the High Court when it decided on 5-1-1995 to institute disciplinary proceedings against the petitioner. On this ground alone the petitioner is entitled to succeed."

Reliance has also been placed on the judgment in **Yoginath D.Bagde v. State of Maharashtra**[7]**,** wherein the Supreme Court held that the High Court had a duty to protect judicial officers of subordinate courts from unscrupulous litigants and lawyers. It also laid down that

it is imperative for High Court to protect its honest judicial officers by ignoring ill-conceived or motivated complaints made by unscrupulous lawyers and litigants. There is no quarrel with this principle, but in the present case, the acts of misconduct stand proved against the petitioner.

On the other hand, the learned counsel for respondents relies on a judgment of Supreme Court in **The High Court of Judicature at Bombay v. Shashikant S.Patil**[8], to canvass that adequacy and reliability of evidence in a departmental enquiry cannot be gone into in the writ petition.

They also relied on a judgment of Supreme Court in **State of Punjab v. Ram Singh Ex-Constable**[9], to submit that even a single act of misconduct if found to be of grievous nature, may justify dismissal from service.

The judgment in **Union of India v. K.K.Dhawan**[10] is also relied upon by the respondents, in which it is laid down that the conduct of an officer in discharge of his duties and not correctness or legality of his decision, is subject to disciplinary action. In para 28 of the judgment,

the Supreme Court held, *"It is important to bear in mind that in the present case, we are not concerned with the correctness or legality of the decision of the respondent, but the conduct of the respondent in discharge of his duties as an officer"*. The Supreme Court was dealing with a case of an Enquiry Officer who had quasi-judicial functions to perform. In this context, the Court held,

> "The legality of the orders with reference to the nine assessments may be questioned in appeal or revision under the Act. But we have no doubt in our mind that the Government is not precluded from taking the disciplinary action for violation of the Conduct Rules. Thus, we conclude that the disciplinary action can be taken in the following cases:
>
> (i) Where the officer had acted in a manner as would reflect on his reputation for integrity or good faith or devotion to duty;
>
> (ii) If there is prima facie material to show recklessness or misconduct in the discharge of his duty;
>
> (iii) If he has acted in a manner which is unbecoming of a Government servant;
>
> (iv) If he had acted negligently or that he omitted the prescribed conditions which are essential for the exercise of the statutory powers;
>
> (v) If he had acted in order to unduly favour a party;
>
> (vi) If he had been actuated by corrupt motive, however small the bribe may be because Lord

> Coke said long ago “though the bribe may be small, yet the fault is great””.

Reliance has also been placed on the judgment of Supreme Court in **B.C.Chaturvedi v. Union of India**[11]. In para 12 of this judgment, the Supreme Court laid down the principles governing the judicial review, as under—

> “12. Judicial review is not an appeal from a decision but a review of the manner in which the decision is made. Power of judicial review is meant to ensure that the individual receives fair treatment and not to ensure that the conclusion which the authority reaches is necessarily correct in the eye of the court. When an inquiry is conducted on charges of misconduct by a public servant, the Court/Tribunal is concerned to determine whether the inquiry was held by a competent officer or whether rules of natural justice are complied with. Whether the findings or conclusions are based on some evidence, the authority entrusted with the power to hold inquiry has jurisdiction, power and authority to reach a finding of fact or conclusion. But that finding must be based on some evidence. Neither the technical rules of Evidence Act nor of proof of fact or evidence as defined therein, apply to disciplinary proceeding. When the authority accepts that evidence and conclusion receives support therefrom, the disciplinary

> authority is entitled to hold that the delinquent officer is guilty of the charge. The Court/Tribunal in its power of judicial review does not act as appellate authority to re-appreciate the evidence and to arrive at its own independent findings on the evidence. The Court/Tribunal may interfere where the authority held the proceedings against the delinquent officer in a manner inconsistent with the rules of natural justice or in violation of statutory rules prescribing the mode of inquiry or where the conclusion or finding reached by the disciplinary authority is based on no evidence. If the conclusion or finding be such as no reasonable person would have ever reached, the Court/Tribunal may interfere with the conclusion or the finding, and mould the relief so as to make it appropriate to the facts of each case."

Many more judgments have been cited at the Bar, but it is not necessary to multiply the authorities with regard to as to what constitutes the misconduct and what is the scope of judicial review.

For the reasons given hereinabove, we find that neither the impugned order can be quashed on the ground that there was any prejudice caused to the petitioner by not allowing her to be represented through a

legal practitioner, nor was there any bias shown from the Enquiry Officer-cum-District Judge, Visakhapatnam or by the District Judge, Srikakulam under whom the petitioner was working at the relevant point of time. We also do not agree, for the reasons given hereinabove, that the charges framed and proved against the petitioner do not constitute misconduct.

Writ petition is accordingly dismissed.

BILAL NAZKI, J

M. VENKATESWARA REDDY, J

29th December 2006

N.B:
L.R. Copies to be marked.
(b/o)
ajr

[1] 2001 (3) ALD 625 = 2001 (5) ALT 228 (DB)
[2] 2001 (6) ALT 255 (F.B)
[3] AIR 1972 SC 2179
[4] 1991 Supp (2) SCC 12
[5] (2001) 6 SCC 491
[6] 1998 SCC (L&S) 1389
[7] (1999) 7 SCC 739

[8] AIR 2000 SC 22

[9] (1992) 4 SCC 54

[10] (1993) 2 SCC 56

[11] (1995) 6 SCC 749